

**106 KAR 2:040. Survivor benefits for death of a National Guard or Reserve Component member.**

RELATES TO: KRS 61.315

STATUTORY AUTHORITY: KRS 61.315(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.315(7) requires the Department of Military Affairs to promulgate an administrative regulation to establish the criteria and procedures pertaining to benefits relating to a National Guard or Reserve Component member's death in the line of duty. This administrative regulation establishes the procedures applicable to a claimant who desires to request a hearing concerning a claimant's eligibility for benefits pertaining to a National Guard or Reserve Component member's death in the line of duty after July 1, 2002.

Section 1. Definitions. (1) "Act in the line of duty":

(a) Means, with respect to a member of the National Guard or Reserve component with a home of record in Kentucky:

1. Except as established in paragraph (b)6. of this subsection, an act or omission to act;
2. A work-related event involving the member; or
3. An external force upon the member while the member is engaged in an action or duty for which the member is obligated or authorized by rule, administrative regulation, condition of employment or service, or law to perform for the National Guard or Reserve component; and

(b) Does not mean:

1. A nonwork-related disease or condition or a routine work-related disease or condition common to the eligible member's occupation;
2. Intentional misconduct of the eligible member;
3. The eligible member's intention to bring about his or her own death;
4. The eligible member's willfulness or wanton disregard that brings about his or her own death;
5. The eligible member's voluntary intoxication if intoxication is a contributing factor in his or her own death; or
6. An action or omission of a beneficiary, which act or omission constitutes a substantial factor in the death of an eligible member.

(2) "Child" means a natural, adopted, or posthumously born child or natural, adopted, or posthumously born children, born of the deceased member, without regard to the deceased member's marital status.

(3) "Claimant" means a spouse, child, or parent who files a claim for death benefits pursuant to KRS 61.315.

(4) "Death as a direct result of an act:

(a)1. Means that the antecedent act, omission to act, or event inflicted upon the eligible member was the substantial factor in the member's death; and

2. Includes, if applicable, circumstances related to attending National Guard or Reserve Component-related meetings and events as a representative of the National Guard of Reserve Component, including travel to and from local, state, or national meetings or events; and

(b) Does not mean participation in any sports or athletic event or contest, for the purpose of fund raising or any other purpose.

(5) "Death in the line of duty" means the death of an eligible member due to his or her performance of an act in the line of duty that results in:

(a) Immediate death;

(b) A traumatic injury, wound, condition of the body, or disease resulting in death; or

(c) Medical intervention for a condition in paragraph (b) of this subsection that directly causes death.

(6) "Parent" means a natural or adoptive parent of the member living at the time of the member's death.

(7) "Spouse" means the lawfully wedded husband or wife of the deceased member living at the time of the member's death, and includes a spouse living apart for any reason from the member at the time of the member's death or a spouse involved in divorce proceedings if a final divorce decree has not been entered.

Section 2. Eligibility. (1) Survivors. Except as established in subsection (2) of this section, benefits shall be paid to the surviving spouse, surviving child or children, or both, as established in KRS 61.315(2).

(2) An action or omission of a beneficiary, which act or omission constitutes a substantial factor in the death of an eligible member, shall preclude benefits to that beneficiary only.

Section 3. Proof of Relationship. In filing the claim for death benefits, the claimant or claimant's representative shall submit certification of relationship status by the member's National Guard or Reserve component Casualty Assistance Officer or National Guard or Reserve Component personnel directorate.

Section 4. Submission of Claim by Proper Party. (1) A death benefit claim shall be filed with the office of the Executive Director, Management and Administration, Kentucky Department of Military Affairs, 100 Minuteman Parkway, Frankfort, Kentucky 40601.

(2) The claim shall be submitted and executed by the claimant or the claimant's legally designated representative, including the member's Casualty Assistance Officer or National Guard or Reserve Component personnel directorate, upon submission of written proof of that designation.

Section 5. Proof of Death as a Direct Result of an Act in the Line of Duty. The claimant shall provide proof of death of the eligible employee as a direct result of an act in the line of duty by providing:

(1) The appropriate U.S. Department of Defense military component DD Form 1300, Report of Casualty; or

(2) For a death in State Active Duty status, the Serious Incident Report (SIR) or a similar document, filed by the Joint Operations Center or a similar agency, documenting to the National Guard Bureau the circumstances of the guardsman's death.

Section 6. Certification of Payment of Benefits. Upon certification of survivorship rights to the State Death Benefit, the sum authorized by KRS 61.315(2) shall be paid in check by the state treasurer from the general expenditure fund of the state treasury, as required by KRS 61.315(2) and the treasurer shall transmit the check to the department's administrator for payment to the eligible survivor or survivors.

Section 7. False and Fraudulent Statements. A person who knowingly or willfully makes any false or fraudulent statement or representation in any record or report to the department under KRS Chapter 61.315 or this administrative regulation shall cause the survivors to become ineligible for further funds, and those survivors may be responsible for the return to the state treasury of those funds that were received through these false or fraudulent statements or representations.

Section 8. Right of Review. If a death occurs after twelve (12) months and is believed to be related to the definitions established in Section 1(1), (4), or (5) of this administrative regulation, the department shall have the right of review to determine if the death constitutes death in the line of

duty.

Section 9. Appeals. (1) If the executive director or the executive director's designated representative finds the claimant ineligible for a death benefit, the executive director shall notify the claimant in writing at claimant's last known address of the disposition and shall set forth findings of fact and conclusions of law supporting the decision, as well as claimant's right to a hearing and review by the Adjutant General of Kentucky.

(2) A decision of the department negatively affecting the eligibility of a survivor to be a recipient of the fund shall not be final until the survivor shall have been afforded an opportunity to be heard on the matter.

Section 10. Incorporation by Reference. (1) "Report of Casualty", DD Form 1300, February 2011, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Military Affairs, Division of Administrative Services, 100 Minuteman Parkway, Boone National Guard Center, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. (44 Ky.R. 162, 904; eff. 12-1-2017.)